

12-398 ASSOC. FOR MOLECULAR PATHOLOGY V. MYRIAD GENETICS, INC.

DECISION BELOW: 689 F.3d 1303

LOWER COURT CASE NUMBER: 2010-1406

QUESTION PRESENTED:

Many patients seek genetic testing to see if they have mutations in their genes that are associated with a significantly increased risk of breast or ovarian cancer. Respondent Myriad Genetics obtained patents on two human genes that correlate to this risk, known as BRCA1 and BRCA2. These patents claim every naturally-occurring version of those genes, including mutations, on the theory that Myriad invented something patent-eligible simply by removing ("isolating") the genes from the body. Petitioners are primarily medical professionals who regularly use routine, conventional genetic testing methods to examine genes, but are prohibited from examining the human genes that Myriad claims to own. This case therefore presents the following questions:

1. Are human genes patentable?

2. Did the court of appeals err in upholding a method claim by Myriad that is irreconcilable with this Court's ruling in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012)?

3. Did the court of appeals err in adopting a new and inflexible rule, contrary to normal standing rules and this Court's decision in *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), that petitioners who have been indisputably deterred by Myriad's "active enforcement" of its patent rights nonetheless lack standing to challenge those patents absent evidence that they have been personally threatened with an infringement action?

CERT. GRANTED 11/30/2012